IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION APPLICATION NO.144 OF 2006

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Ornate Multi Modal
Carriers Pvt.Ltd. ...Applicant

v/s.

Jawaharlal Nehru Port Trust
Operation ...Respondent

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Mr.Ashish Kamat i/b Kartikaya & Associates for the Applicant.
Mr.S.K.Bhalwal i/b Vyas & Bhalwal for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 6TH OCTOBER,2006

P.C.:

1. It is common ground that the dispute between the parties is that the Respondent is not releasing the bank guarantee submitted by the Petitioner under clause 10:1 of the contract between the parties. According to the Petitioner, arbitration clause is contained in Clause 24:13 of the contract between the parties.

2. According to the Respondent, clause 24.13 firstly is not arbitration clause. In the alternative it is submitted that if it is an arbitration clause, then it relates to the dispute arising during the currency of the contract. The dispute between the parties is the dispute arising after the completion of the contract. Therefore, it is not covered by the arbitration clause. Bank guarantee is given under clause 10.1. It reads as under:-

> 10.1 The successful tenderer shall submit a bank guarantee towards security deposit equivalent to Rs.65 lakhs (Rupees Sixty Five

> Lakhs only) within 15 days from the date of receipt of Letter of Acceptance (LOA). The Bank Guarantee shall be issued by and Scheduled Bank having its branch in Mumbai, covering the entire period of contract. A copy of the format of the Bank Guarantee is enclosed along with the tender document at Annex IV.

. Perusal of the above clause shows that there is an obligation on the tenderer to furnish a bank guarantee equivalent to Rs.65 lakhs within 60 days of the receipt of the acceptance letter. Then, comes clause 10.2. It reads as under:-

> 10.2 The Bank Guarantee will be released to the contractor within 30 days from receipt of an application thereof in that effect, after successful completion of the contract to the satisfaction of the JNPT.

. Perusal of the above clause makes it clear that the occasion to release the bank guarantee arises after the receipt of the application for that purpose from the contractor and that application can be made

by the contractor after successful completion of the contract to the satisfaction of the Respondent. It is, therefore, obvious that the dispute about non-release of the bank guarantee would arise only after completion of the contract. According to the Petitioner, clause 24.13 is arbitration clause. It reads as under:-

> 24.13 During of the currency of the contract, any case of disputes arises between JNPT and the contractor, the decision of the Chairman, JNPT shall remain final and binding on both the parties.

. Perusal of the above clause shows that only dispute arising between the parties during the currency of the contract can be referred to the Chairman. The dispute about non-release of the bank guarantee arose after completion of the contract and not during the currency of the contract. The reason that is given by the Respondent for non-release of the bank guarantee would obviously refer to things done by the Petitioner during the currency of the contract, but in my opinion, is not relevant. What is relevant is the point of time at which the dispute

arose. The point of time at which the dispute under clause 10.2 would arise would be after completion of the contract. Therefore, assuming that clause 24.13 is an arbitration clause, the dispute regarding non-release of bank guarantee will not be arbitrable. Petition is, therefore, disposed of.

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